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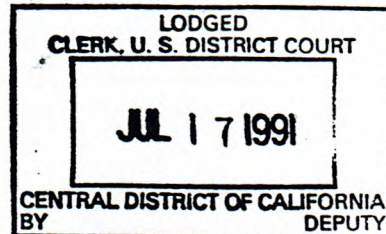
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKI J. AZNARAN and
RICHARD N. AZNARAN,

Plaintiffs,

v.

CHURCH OF SCIENTOLOGY OF
CALIFORNIA, et al.,

Defendants.

AND RELATED COUNTERCLAIMS.

) CASE No. CV 88-1786-JMI(Ex)
)
) NOTICE OF MOTION AND MOTION
) FOR SUMMARY JUDGMENT PURSUANT
) TO THE FIRST AMENDMENT;
) MEMORANDUM OF POINTS AND
) AUTHORITIES

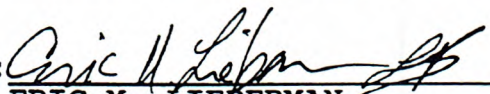
) DATE: August 19, 1991
) TIME: 10:00 a.m.
) COURTROOM: Hon. James M. Ideman

1 ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD: PLEASE
2 TAKE NOTICE that on August 19, 1991, at 10:00 a.m., before the
3 Honorable James M. Ideman of the United States District,
4 located at 312 North Spring Street, Los Angeles,
5 California^{1/} defendants CHURCH OF SPIRITUAL TECHNOLOGY;
6 RELIGIOUS TECHNOLOGY CENTER; AUTHOR SERVICES, INC.; and CHURCH
7 of SCIENTOLOGY INTERNATIONAL will move this Court for an order
8 granting summary judgment of moving defendants and against
9 plaintiffs VICKI J. AZNARAN and RICHARD N. AZNARAN, pursuant
10 to Fed.R.Civ.P. 56, that Scientology is a religion within the
11 meaning of the First Amendment to the United States Constitution
12 and that the moving defendants are thereby entitled to the
13 protections of the Establishment and Free Exercise Clauses of
14 the First Amendment, and that plaintiffs' complaint must be
15 dismissed as in violation of the protections afforded defendants
16 by the First Amendment. This Motion will be based upon this
17 Notice, the attached Memorandum of Points and Authorities, the
18 Exhibits filed herewith, the pleadings, records and files in
19 this action, and such other evidence as may be presented.

20 Dated: July 17, 1991

Respectfully submitted,

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23 By: 
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27 1/ Pursuant to Judge Ideman's general rules, no oral argument
28 will be held absent further order of the Court.

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1
2 MEMORANDUM OF POINTS AND AUTHORITIES

3 INTRODUCTION

4 Plaintiffs attempt to insinuate the judiciary into a
5 doctrinal dispute between a Church and the former president of
6 that Church's highest ecclesiastical organization and her husband
7 (also a church official) concerning the beliefs, dogma, religious
8 practices, and internal governance of the Church. Plaintiffs
9 make no claim that they were physically coerced to join the
10 Church, to partake of religious counseling, or to make monetary
11 or other contributions to the Church. Nor do they allege that
12 defendants attempted to prevent them from leaving the Church.
13 Rather, plaintiffs ask this Court to find that the religious
14 doctrines of the Church are false and fraudulent, that the
15 voluntary, peaceful religious practices of the Church are
16 dangerous and constitute outrageous conduct.

17 The First Amendment prohibits judicial inquiry into the
18 subject matter of this case. The courts may not adjudicate
19 disputes between religious organizations and their members on
20 matters inseparable from religious doctrine or practice. Nor may
21 they hear claims by former members or leaders that the tenets of
22 a religious creed are false or fraudulent, or risky or dangerous
23 or have bad effects. The First Amendment further bars civil
24 courts from resolving internal religious disputes including
25 matters of internal Church governance, discipline and employment.

26 It is essential that the constitutional prohibitions
27 against such a judicial inquiry be applied now -- before the
28 damaging spectacle of a several-month religious inquisition takes

1 place. For, "[i]t is not only the conclusions that may be
2 reached . . . which may impinge on rights guaranteed by the
3 Religion Clauses, but also the very process of inquiry leading to
4 findings and conclusions." NLRB v. Catholic Bishop of Chicago,
5 440 U.S. 490, 502 (1979). This Court must conclude that, on the
6 undisputed facts, the Aznarans' claims must be dismissed prior to
7 trial.^{1/}

8 ARGUMENT

9 I. SCIENTOLOGY IS A RELIGION UNDER THE FIRST AMENDMENT

10 Scientology has been held to be a religion protected by the
11 First Amendment before so many courts over the last 20 years that
12 it must now be considered a settled matter. Indeed, over six
13 years ago one court took "judicial notice that Scientology is a
14 religion." Church of Scientology of Boston, Inc. v. Flynn, Nos.
15 40906, et al. (Mass.Sup.Ct., Aug. 3, 1984) (filed herewith as
16 Exhibit A).

17 The seminal case recognizing Scientology's status as a
18 religion is Founding Church of Scientology v. United States, 409
19 F.2d 1146 (D.C. Cir.), cert. denied, 396 U.S. 963 (1969). There,
20 the court concluded that Scientology:

21 has ministers, who are licensed as such, with legal
22 authority to marry and to bury. Its fundamental
23 writings contain a general account of man and his
24 nature comparable in scope, if not in content, to

25
26 ^{1/} The underlying facts of the case are set forth in the Joint
27 Status Report at 9-16, and in Defendants' Memorandum of Points
28 and Authorities in Support of their Motion for Summary Judgment,
dated October 22, 1990 ("Oct. 22 Memo"). Additional facts, where
relevant, are set forth in the body of this brief. The standards
for summary judgment are set forth in the Oct. 22 Memo at 4-6.

1 those of some recognized religions. The fact that
2 it postulates no deity in the conventional sense
3 does not preclude its status as a religion. . . .
4 we conclude that for purposes of review of the
5 judgment before us [the Church is] entitled to the
6 protection of the free exercise clause.

7 Id. at 1160. Recently, in Hernandez v. C.I.R., 490 U.S. 680,
8 684-85 (1989), the Supreme Court described Scientology in
9 religious terms, and discussed its structure, beliefs, and
10 practices.^{2/} In Church of Scientology of California v. C.I.R.,
11 823 F.2d 1310 (9th Cir. 1987), cert. denied, 486 U.S. 1015
12 (1988), the Ninth Circuit found that "Scientology is an
13 international religion with numerous churches around the world,"
14 and that "the Church propagated the Scientology faith, a religion
15 founded by L. Ron Hubbard." Id. at 1313.

16 The other courts which have considered the issue have
17 agreed that Scientology is a religion. In Peterson v. Church of

18 ^{2/} "Scientology was founded in the 1950's by L. Ron Hubbard.
19 It is propagated today by a "mother church" in California and
20 by numerous branch churches around the world. The mother
21 church instructs laity, trains and ordains ministers, and
22 creates new congregations. . . ."

23 Scientologists believe that an immortal spiritual being
24 exists in every person. A person becomes aware of this
25 spiritual dimension through a process known as "auditing."
26 Auditing involves a one-to-one encounter between a
27 participant (known as a "preclear") and a Church official
28 (known as an "auditor"). An electronic device, the E-meter,
helps the auditor identify the preclear's areas of spiritual
difficulty. . . ."

"The Church also offers members doctrinal courses known
as "training." Participants in these sessions study the
tenets of Scientology and seek to attain the qualifications
necessary to serve as auditors. Scientologists are taught
that spiritual gains result from participation in such
courses."

1 Scientology of California, No. CV-81-3259-CBM (D.C.Cal. Feb. 27,
2 1984) (filed herewith as Exhibit B), this district concluded on a
3 motion for summary judgment, accompanied by substantial evidence:
4 "This Court finds that the Church of Scientology is a religion
5 within the meaning of the First Amendment. The beliefs and ideas
6 of Scientology address ultimate concerns -- the nature of the
7 person and the individual's relationship to the universe." Id.
8 at 2 (emphasis added).^{3/}

9 The religious nature of Scientology is an ultimate question
10 of law which must be decided by the court and not referred to a
11 jury for trial. United States v. Silberman, 464 F.Supp. 866, 871
12 (M.D.Fla. 1979); Malnak v. Yogi, 440 F.Supp. 1284, 1326-27
13 (D.N.J. 1977), aff'd, 592 F.2d 197 (3rd Cir. 1979); Church of God
14 v. Amarillo Independent School District, 511 F.Supp. 613
15 (N.D.Tex. 1981), aff'd, 670 F.2d 46 (5th Cir. 1982); Peterson v.
16 Church of Scientology of California, supra; Christofferson v.
17 Church of Scientology of Portland, 644 P.2d at 601.^{4/} Weiss,

18 ^{3/} Accord Christofferson v. Church of Scientology of
19 Portland, 57 Or.App. 203, 644 P.2d 577, 601 (1982), cert.
20 denied, 459 U.S. 1206 (1983); Church of Scientology Flag
21 Services Org., Inc. v. City of Clearwater, 756 F. Supp. 1498,
22 1511 (M.D. Fla. 1991); see also Barr v. Weise, 412 F.2d 338,
339-40 (2d Cir. 1969); Church of Scientology v. Siegelman,
475 F. Supp. 950, 954 (S.D.N.Y. 1979) ("world-wide religious
movement").

23 ^{4/} The Supreme Court has repeatedly held that whether speech may
24 be stripped of its First Amendment protections is ultimately a
25 question of constitutional law to be determined by the court on
26 an independent examination of the factual record in order to
27 ensure that the judgment does not constitute a forbidden
28 intrusion on free expression. See, e.g., Bose Corp. v. Consumers
Union of United States, Inc., 466 U.S. 485 (1984) (whether a
libel defendant acted with "actual malice"); Connick v. Myers,
461 U.S. 138, 148 n.7 (1983) ("inquiry into the protected status
of speech is one of law, not fact."); Sable Communications of
California, Inc. v. FCC, 492 U.S. 115, 129 (1989) (deference to
(footnote continued)

1 Privilege, Posture and Protection: "Religion" in the Law, 73
2 Yale L.J. 593, 607 (1964).

3 The Supreme Court has adopted an expansive definition of
4 religion, in which the protections of the Religion Clauses of the
5 First Amendment are not limited to "belief in some particular
6 kind of religious concept," or to "those religions based on a
7 belief in the existence of God as against those religions founded
8 on different beliefs." Torcaso v. Watkins, 367 U.S. 488, 494-95
9 (1961); see United States v. Seeger, 380 U.S. 163, 174, 180
10 (1965). Instead, the Supreme Court has applied an objective
11 functional definition of religion. The test "is essentially an
12 objective one, namely, does the claimed belief occupy the same
13 place in the life of [its possessor] as an orthodox belief in God
14 holds in the life" of a traditional believer. Seeger, 380 U.S.
15 at 184; see Welsh v. United States, 398 U.S. 333, 339 (1970)
16 (test is whether beliefs play "the role of a religion and
17 function as a religion in the [believer's] life"); see also
18 Christofferson, 644 P.2d at 601; Washington Ethical Society v.
19 District of Columbia, 249 F.2d 127 (D.C. Cir. 1957); Fellowship

20
21
22
23 (footnote continued from previous page)
24 legislative findings "would not foreclose our independent
25 judgment of the facts bearing on an issue of constitutional
26 law"); see also Bon Air Hotel, Inc. v. Time, Inc., 426 F.2d 858,
27 865 (5th Cir. 1970) ("In the First Amendment area, summary
28 procedures are even more essential") (internal quotation
omitted). As the court recognized in Malnak, supra, 440 F. Supp.
at 1326 n.30, this same rationale for judicial determination of
"constitutional facts" applies with equal force to questions of
religiosity under the First Amendment, and should not be resolved
by a jury.

1 of Humanity v. County of Alameda, 153 Cal.App.2d 673, 315 P.2d
2 394 (1957).^{5/}

3 Lower court cases have drawn on these Supreme Court pre-
4 cedents to fashion a workable definition of religion that avoids
5 an analysis of the content of beliefs and instead looks for
6 indicia of a "modern" religion. See, e.g., Malnak, 592 F.2d at
7 207-09 (Adams, J., concurring) (considering: 1) whether the
8 ideas or beliefs address issues of fundamental or ultimate
9 concern; 2) whether the ideas are combined into a "comprehensive
10 belief-system"; and 3) whether there are any formal, external, or
11 surface signs which may be analogized to accepted religions);^{6/}
12 see also Africa v. Pennsylvania, 662 F.2d 1025, 1032-36 (3d Cir.
13 1981) (adopting Judge Adams' analysis), cert. denied, 456 U.S.
14 908 (1982); International Society for Krishna Consciousness, Inc.
15 v. Barber, 650 F.2d 430, 438-41 (2d Cir. 1981) (applying similar
16 functional approach to determining religious status of Hare
17 Krishna movement); see also Fellowship of Humanity, supra, 153
18 Cal.App.2d 673; Brown v. Dade Christian Schools, Inc., 556 F.2d
19 310 (5th Cir. 1977), cert. denied, 434 U.S. 1063 (1978). Indeed,
20 Malnak and Seeger were relied upon by Judge Marshall of this

21 ^{5/} Indeed, the issue of religiosity does not even depend on
22 whether the individual or organization claims its beliefs are
23 religious in nature. Thus, although Welsh explicitly denied that
24 his conscientious objection to war was based on religious
25 beliefs, Welsh, 398 U.S. at 341, the Court held that denial of
26 conscientious objector status on this basis "places undue
27 emphasis on the registrant's interpretation of his own beliefs."
28 Id. Because individuals are generally unaware "of the broad
scope of the word 'religious' . . . a registrant's statement that
his beliefs are nonreligious is a highly unreliable guide. . . ."
Id.; see also Malnak v. Yogi, 440 F. Supp. at 1318.

27 ^{6/} Judge Adams noted that "[t]hese formal signs of religion" had
28 contributed towards the finding in Founding Church, 409 F.2d at
1160, that Scientology was a religion. Malnak, 592 F.2d at 210.

1 court in holding that Scientology is a religion and that "[t]he
2 theories of Scientology involve a comprehensive belief system."
3 Peterson, supra, at 2 (Exhibit B).

4 The underlying basis for the universal judicial recognition
5 that Scientology is a religion is set forth in the declarations,
6 submitted in support of this motion, of Reverend Raymond
7 Mithoff,^{7/} and of two recognized experts on comparative religion,
8 Dr. Lonnie D. Kliever^{8/} and Dr. Frank K. Flinn.^{9/} It would serve
9 no purpose and would unduly burden the Court to engage here in
10 quotation or repetition of the scholarly analysis of these two
11 highly qualified experts in comparative religion.^{10/} We
12 respectfully refer the Court directly to the declarations
13 themselves, which irrefutably establish that Scientology embodies
14 a comprehensive system of religious beliefs and practices
15 administered to a community of adherents by an ordained trained
16 clergy. Its beliefs and practices, particularly its central

17 ^{7/} Reverend Mithoff is an ordained minister of the Scientology
18 religion and, as Inspector General for Technical of RTC, has held
19 the highest ecclesiastical position in the Scientology religion
since April 1987. His declaration and curriculum vitae is filed
herewith as Exhibit C.

20 ^{8/} Professor Kliever has been Chairperson of Religious Studies
21 at Southern Methodist University for eleven years, and is a
22 philosopher of religion and culture with specialized competence
in the religions of the modern era. Professor Kliever's
declaration and curriculum vitae is filed herewith as Exhibit D.

23 ^{9/} Dr. Flinn, a Catholic, holds a Bachelor of Divinity from
24 Harvard Divinity School and a Ph.D from St. Michael's College,
25 Toronto School of Theology. He has taught, lectured and written
26 extensively on religion, particularly on the subject of newer
religious movements of the 19th and 20th centuries. Dr. Flinn's
declaration is filed herewith as Exhibit E.

27 ^{10/} The Court in Church of Scientology Flag Services Org.,
28 supra, relied upon the affidavits of Dr. Flinn and Professor
Kliever in holding that Scientology is a religion. 756 F. Supp.
at 1510-11.

1 religious practice of auditing, are addressed to the soul, and
2 aim to bring the soul to spiritual enlightenment. Scientology is
3 a missionary organization in that its ultimate goal is to bring
4 what it deems to be salvation to all of humanity. Thus, in every
5 way, Scientology plays "the role of a religion and function[s] as
6 a religion," Welsh, 398 U.S. at 339, in the life of a
7 Scientologist that traditional religions play in the life of
8 their adherents. From this constitutional perspective -- the
9 only perspective this Court may take -- Scientology is a religion
10 entitled to full constitutional protection.

11 Indeed, the Aznarans' own deposition testimony^{11/} also
12 demonstrates that they experienced and understood Scientology to
13 be a religion during their fifteen years as adherents of the
14 religion. As extensively shown in the declaration of Professor
15 Kliever, ¶¶ 26-48, their testimony shows that Scientology beliefs
16 and practices played "the role of a religion and function[ed] as
17 a religion in the [Aznarans'] li[v]e[s]", Welsh, 398 U.S. at 339;
18 that the Scientology beliefs shared by the Aznarans addressed
19 issues of fundamental or ultimate concern; and that they were
20 combined into a "comprehensive belief-system." Malnak, 592 F.2d
21 at 207-09 (Adams, J., concurring). Professor Kliever also

22
23 ^{11/} Citations to "V.A. Dep. at ____" are to the transcript pages
24 of the deposition of Vicki Aznaran, excerpts of which are filed
25 herewith as Exhibit F. Citations to "R.A. Dep. I at ____" are to
26 the transcript pages of the deposition of Richard Aznaran taken
27 from July 14, 1988 to September 8, 1988; citations to "R.A. Dep.
28 II at ____" are to the transcript pages of the deposition of Mr.
Aznaran taken from January 23, 1989 to June 14, 1989, excerpts of
both of which are filed herewith as Exhibit G. Citations to "Ex.
____" are to the exhibits to the Aznarans' deposition testimony,
which are filed herewith as Exhibit H for exhibits to Vicki
Aznaran's deposition and Exhibit I for exhibits to Richard
Aznaran's deposition.

1 dispositively shows that the Aznarans' attempts to deny the
2 religiosity of Scientology are based upon narrow and improper
3 concepts of what is or is not a religion. Id.

4 **II. THE AZNARANS' CLAIMS ARE BARRED BY THE FIRST AMENDMENT**

5 **A. The Fraud Claim Explicitly Requires A Jury**
6 **To Evaluate The Truth Or Falsity Of Religious**
7 **Beliefs And The Efficacy Of Religious Practices**

8 Plaintiffs allege that the defendants falsely represented
9 "that they were rendering services of a spiritual and
10 psychological nature that would make Plaintiffs better persons,
11 including statements that Scientology technology would
12 scientifically improve Plaintiffs' well being and make them
13 psychologically better people." Complaint, ¶ 54 (emphasis
14 added).^{12/} Plaintiffs further charge that the defendants "knew
15 that the practices" of Scientology "were not designed to increase
16 the well-being" of plaintiffs, but were "made to coercively per-
17 suade" them "to dedicate their lives to Defendants." Id. ¶ 55.
18 These allegations are reiterated in the Status Report, at 4, with
19 the embellishment that the representations, including those re-
20 garding "spiritual services," were made for the purpose of
21 "brainwashing" the plaintiffs. It would be impossible to find a
22 clearer statement that the Aznarans' fraud claims require inquiry
23 into the truth of religious representations.

24 ^{12/} Virtually identical allegations are made in paragraphs 35
25 and 40 (intentional and negligent infliction of emotional
26 distress), paragraphs 61, 62 (breach of contract), and paragraph
27 81 (constructive fraud) of the complaint. The Status Report, at
28 4-7, also explicitly reaffirms that the claims for intentional
and negligent infliction of emotional distress, breach of
contract, constructive fraud, and restitution are wholly
dependent on the fraud claim, and those claims must also fail
upon dismissal of the fraud claim.

1 The Aznarans' specific allegations of fraud in their depo-
2 sition testimony are set forth in defendants' Oct. 22 Memo at 7-
3 10. In summary, the Aznarans claim that various individuals made
4 representations of a "spiritual nature" that Scientology would
5 "benefit" or "help" them, make them "better," "more capable,"
6 "more able," and would "handle the mind." V.A. Dep. at 1237-48;
7 R.A. Dep. II at 619-47, 652-72. More recently, plaintiffs des-
8 cribed "the essence" of their fraud claim as purported misrepre-
9 sentations that defendants had "at heart the best interests" of
10 the plaintiffs. See Plaintiffs Memorandum In Opposition to
11 Defendants Motion for Summary Judgment, dated December 7, 1990,
12 at 46-47 (hereinafter "Pl. Dec. 7 Mem.").^{13/}

13 The First Amendment, however, forbids holding a church
14 liable for fraud for "false" representations concerning the bene-
15 fits of participating in the Church's religious practices, or for
16 interpretations of an individual's spiritual well-being. Such
17 liability would strike a devastating blow at the very heart of
18 religious liberty because it would require a religion to demon-
19 strate the efficacy, and hence truthfulness, of its religious
20 beliefs. At least since Ballard, however, evaluation of the
21 truth or falsity of religious representations, particularly for
22 purposes of determining fraud, has been expressly forbidden. In

23 ^{13/} In their Dec. 7 Mem., at 38, plaintiffs relied upon the
24 following alleged statements for their fraud claim: defendants
25 "(1) misrepresented that their religious label was unimportant
26 and were not a religion, (2) were acting in plaintiffs' best
27 interests, (3) that the personality test meant plaintiffs were in
28 danger, (4) that plaintiffs' coursework was unacceptable and they
must commence auditing to avoid the demise of their marriage, and
(5) that L. Ron Hubbard was a nuclear physicist, had come back
twice from the dead and had healed himself from being blind and
crippled, with the intent to induce each of them to associate
with and ultimately join Scientology."

1 Ballard, the Court explicitly held that, in a prosecution for
2 fraud, "all questions concerning the truth or falsity of the
3 religious beliefs or doctrines of [the defendants]" must be
4 "withheld from the jury." 322 U.S. at 88.^{14/}

5 The civil courts may not entertain a lawsuit by a former
6 member of a religious organization against that organization for
7 fraud or misrepresentation in matters of religious belief or
8 practice. As the court held in Founding Church:

9 [U]nder Ballard it seems unlikely that a disgruntled former
10 adherent could sue a church for fraud and deceit because it
11 had collected money from him on the basis of allegedly
12 "false" doctrines concerning salvation, heaven and hell --
13 or for that matter on the basis of doctrines, such as those
14 of the Christian Scientists, concerning the cause and cure
15 of disease.

16 409 F.2d at 1156 n.32. The court added, "regulation of religious
17 action which involves testing in court the truth or falsity of
18 religious belief is barred by the First Amendment." Id. at 1156.

19 The court in Founding Church explicitly recognized that
20 what may appear to the layman as a factual claim, subject to
21 objective verification, is an article of faith to the believer,
22 beyond the powers of examination by man or court. The court
23 reasoned that "a finding that the seized [Scientology] literature

24 ^{14/} See also Cantwell 310 U.S. at 305, 310; Seeger, 380 U.S. at
25 184 ("[t]he validity of what [the conscientious objector]
26 believes cannot be questioned"); Katz v. Superior Court, 73
27 Cal.App.3d 952, 987, 141 Cal.Rptr. 234, 255 (1977) (rejecting any
28 inquiry that might lead to "investigating and questioning the
validity of [a party's] faith"); Fellowship of Humanity v. County
of Alameda, 153 Cal.App.2d 673, 315 P.2d 394, 406 (1957); Estate
of Supple, 247 Cal.App.2d 410, 55 Cal.Rptr. 542 (1966), cert.
denied, 389 U.S. 208 (1967).

1 misrepresents the benefits from auditing is [the equivalent of] a
2 finding that their religious doctrines are false." 409 F.2d at
3 1156. For precisely the same reason, a jury finding that various
4 individuals misrepresented the benefits of auditing to the
5 Aznarans would be equivalent to finding that Scientology reli-
6 gious doctrines are false.

7 Plaintiffs cannot avoid the Ballard doctrine by attempting
8 to focus on individual representations of a so-called "psycholo-
9 gical" or "self-help" nature, claiming that such purportedly
10 "secular" statements are actionable even if the "spiritual" or
11 "religious" representations are not. As the court stated in
12 Christofferson:

13 Plaintiff's approach to this case has been to treat the
14 alleged statements by defendants in vacuo, but we do not
15 believe that it is constitutionally permissible to approach
16 them that way. In this case, the issue of whether the
17 allegedly fraudulent statements are entitled to the protec-
18 tion of the First Amendment involves several questions.
19 Statements made by religious bodies must be viewed in the
20 light of the doctrines of that religion. Courts may not
21 sift through the teachings of a religion and pick out
22 individual statements for scrutiny, deciding whether each
23 standing alone is religious.

24 644 P.2d at 600; see Anderson v. Worldwide Church of God, 661 F.
25 Supp. 1400, 1401 (D.Minn. 1987).

26 The proper approach is to protect all statements about
27 practices which are part of the religious program of a church, as
28 long as the statements were not made in a "wholly secular" con-

1 text. Christofferson, 644 P.2d at 603-04; Founding Church, 409
2 F.2d at 1161-62. That certain statements might be susceptible to
3 a secular interpretation if divorced from the religious context
4 in which such statements are presented is irrelevant. As the
5 court stated in the Founding Church case:

6 statements concerning the powers of auditing over the ills
7 of mind and body are not readily separable from general
8 statements of Scientological doctrines concerning the nature
9 of man and the relationship of his mind to his body.

10 409 F.2d at 1159. The court added that Ballard "makes suspect
11 the legal inquisition of such doctrines." Id.

12 In this case, there can be no question that from the very
13 beginning of their association with the Scientology religion, the
14 representations were made to the Aznarans in a religious context,
15 i.e., in a context in which the Aznarans understood the spiritual
16 and transcendent nature of the Scientology belief system (whether
17 they now choose to call it "religion" or not). See Kliever
18 Declaration, ¶¶ 26-48. That the Aznarans understood the
19 representations to be religious is also made clear in their
20 pleadings that the alleged misrepresentations were of a spiritual
21 nature. Complaint, ¶ 54; Status Report, at 4.

22 The First Amendment absolutely precludes evaluation by
23 judge or jury of the alleged misrepresentations claimed by the
24 Aznarans. As one court recently stated, "The government may not
25 evaluate the benefits of religious practice including the truth
26 or falsity of statements about the benefits of religious
27 practices under any circumstances." Church of Scientology Flag
28 Services Org., supra, 756 F. Supp. at 1513 (emphasis added); id.

1 at 1516 (government "may not attempt to regulate the content of
2 the representations made to induce contributions on the basis
3 that the representations falsely state spiritual, emotional or
4 other benefits that may accrue to the contributor in this world
5 or the next.")^{15/}

6 **B. The False Imprisonment Claim Must Be Dismissed**

7 Ms. Aznarans' false imprisonment claim is based solely on
8 the four weeks she spent on the Rehabilitation Project Force
9 ("RPF") in March 1987. Complaint, ¶ 30; V.A. Dep. 733-46, 822,
10 1097; Ex. 40, 108-09. Ms. Aznaran concedes, however, that she
11 consented to go to the RPF because of her support for two
12 individuals -- Pat and Ann Broeker -- in the Scientology leader-
13 ship whom she acknowledges were improperly attempting to take
14 control of the Scientology religion following Mr. Hubbard's
15 death. The false imprisonment claim (as well as the emotional
16 distress claim to the extent it is based on the RPF) is nothing
17 more than Ms. Aznarans' attempt to adjudicate the propriety of
18 her assignment to the RPF, and the discipline and spiritual
19 rehabilitation she experienced there. Matters of internal Church
20 governance, including discipline of high-ranking ecclesiastical
21 officials, however, have long been held beyond the reach of the

22
23 ^{15/} For the identical reasons that the fraud claim must fall,
24 the Eleventh Cause of Action for Constructive Fraud must be
25 dismissed. See Status Report, at 4 (plaintiffs make no
26 distinction between fraud and constructive fraud claim).
27 Similarly, the Fifth Cause of Action for "Conspiracy" must be
28 dismissed, both because there is no such claim under California
law, see Status Report, at 8 n.1; Baltimore Football Club, Inc.
v. Superior Court, 171 Cal.App.3d 352, 359 n.3, 215 Cal.Rptr.
323, 326 n.3 (1985), and because the claim is based solely on the
underlying claim of fraudulent conduct, which must be dismissed.
See Unruh v. Truck Insurance Exchange, 7 Cal.3d 616, 631, 102
Cal.Rptr. 815, 825-26 (1972).

1 secular courts, and this Court lacks the power to adjudicate the
2 propriety of the discipline imposed on Ms. Aznaran, and to which
3 she acceded until she chose to leave her ecclesiastical position.

4 The Aznarans' complaint alleges that following Mr.
5 Hubbard's death in January 1986, a "schism" developed within the
6 Church. Complaint, ¶ 20. The complaint concedes that Ms.
7 Aznaran was sent to the RPF because of her allegiance to the
8 Broekers -- "religious rival[s]" to Scientology's leadership.
9 Id. Ms. Aznaran testified in detail to this attempt by the
10 Broekers to usurp religious authority and her allegiance to the
11 Broekers, although she knew they were acting in disregard of
12 Scientology doctrine. V.A. Dep. at 1049-1107.

13 Soon after Mr. Hubbard's death, Ms. Aznaran began to aid
14 the Broekers in altering the Scientology Grade Chart that had
15 been in effect at the time of Mr. Hubbard's death. V.A. Dep. at
16 1049-53. The Grade Chart lays out the steps of the "Bridge to
17 Total Freedom," as plotted out by Mr. Hubbard, which must be
18 delivered in the precise sequence and manner as established by
19 Mr. Hubbard. Mithoff Declaration, ¶ 10. At that time, and
20 "during [her] entire career as a Scientologist," Ms. Aznaran had
21 tried to be "an on source Scientologist," meaning that she "sub-
22 scribed to the tenet that [Mr. Hubbard] was the source of all
23 Scientology technology" and "that it was a high crime to . . .
24 alter [that technology] in any way." V.A. Dep. at 1052; see
25 Flinn Declaration, ¶¶ 19-23.

26 According to Ms. Aznaran, Pat Broeker wanted to become the
27 "final judge", V.A. Dep. at 1053, and the "final authority" as to
28 whether the Grade Chart was consistent with Mr. Hubbard's

1 writings, id. at 1057, and to replace Raymond Mithoff, who, as
2 senior case supervisor international, had that authority at that
3 time, id. at 1055. The Broekers, therefore, assigned Mithoff to
4 menial labor such as ditchdigging and prevented him from per-
5 forming his previous duties. Id. at 1058. Ms. Aznaran consi-
6 dered Mithoff more highly trained in the Scientology religion
7 than Pat Broeker. Id. at 1057.

8 Ms. Aznaran eventually realized that the Broekers were
9 intending to take control of the Church, but "rather than like a
10 full-time control more of a sort of when they wanted to kind of
11 control," i.e., "sort of an exercise of power without a total
12 acceptance of responsibility." Id. at 1060-61. The Broekers'
13 behavior caused Ms. Aznaran concern about the future of Scien-
14 tology. Id. at 1061. In or about April 1987, she realized,
15 after conversations with Mr. Aznaran and David Miscavige, that
16 Pat Broeker "was attempting to position himself as Source," that
17 is, to replace Mr. Hubbard as the source of all Scientology reli-
18 gious technology. Id. at 1061-62, 1092-96, 1112; see Flinn
19 Declaration, ¶¶ 22-23. Ms. Aznaran acknowledged that attempting
20 to position oneself as the source of Scientology technology is
21 "certainly a high crime." V.A. Dep. at 1063.

22 By March 1986 (two months after Mr. Hubbard's death), she
23 was aware of a dispute developing between the Broekers and David
24 Miscavige, a trustee of RTC, id., partly because of the Broekers'
25 view of their role in connection with the Grade Chart. Id. at
26 1065. Pat Broeker also withheld from the Church certain advanced
27 religious writings of Mr. Hubbard in an effort to increase his
28 own power within the Church. Id. at 1088. The Broekers also

1 began to create chaos by issuing, then rescinding orders, without
2 taking responsibility for their actions. Id. at 1066-67. By
3 December 1986, Pat Broeker was manifesting increasingly bizarre
4 behavior, such as attributing his broken leg to his power as an
5 operating thetan. Id. at 1070, 1089. Ms. Aznaran eventually
6 recognized that Pat Broeker's plans were inappropriate and would
7 have been detrimental to the Church. Id. at 1103-04. According
8 to Ms. Aznaran, Pat "seemed weak," "over the edge," "strange,"
9 "not rational," and "crazy." Id. at 1104-05.

10 Ann Broeker eventually told Ms. Aznaran that the Broekers
11 wanted to remove the trustees of RTC so that Pat Broeker could
12 control RTC "when he wanted control it," id. at 1075-76, and to
13 have the personnel at RTC (including its President, Ms. Aznaran)
14 responsible only to the Broekers, id. at 1076. RTC was the
15 Church organization charged with "the protection of the purity of
16 the technology of L. Ron Hubbard." Id. at 218. On instructions
17 from Pat Broeker, Ms. Aznaran informed Miscavige that she took
18 orders only from the Broekers, not Miscavige or the other RTC
19 trustees. Id. at 1076-77. Ann Broeker promised to provide Ms.
20 Aznaran with "air cover", that is, to protect her in any power
21 struggle, although Ms. Aznaran knew that was unrealistic. Id. at
22 1078-79, 1093-96. Ms. Aznaran described her decision to support
23 the Broekers in an ever widening dispute with the Church's
24 leadership as "most unpleasant." Id. at 1079.

25 By January or February 1987, Ms. Aznaran began to feel
26 squeezed by the Broekers' attempt to control RTC. The Broekers
27 were becoming less accessible to her, and Ann Broeker even
28 refused to meet with her. Id. at 1090. On March 3, Miscavige

1 called Ms. Aznaran into his office and Ann Broeker told her that
2 she (Ann) supported Miscavige's actions. Id. at 1091-93.

3 As a result of that meeting, Ms. Aznaran assigned herself
4 to the RPF on March 3, 1987, and resigned her position as Presi-
5 dent and Director of RTC. Id. at 1096-97, 1114; Ex. 108, 109.^{16/}
6 At that moment, Ms. Aznaran was not sure if she intended to do
7 the RPF program, as she "was very confused," and unsure about
8 Scientology and whether she wanted to leave the Sea Organization.
9 Id. at 1097-99.

10 Ms. Aznaran was no stranger to the RPF, a form of internal
11 church discipline reserved exclusively for Sea Organization mem-
12 bers, those Scientologists who have dedicated themselves for a
13 billion years to the advancement of Scientology, and who provide
14 almost all the ecclesiastical and administrative leadership of
15 the Church. Id. at 607, 614, 619; Flinn Declaration, ¶¶ 16, 24.
16 Sea Organization members know that if they engage in serious
17 violations of Scientology policy and doctrines, they could be
18 sent to the RPF. Id. at 619. As President of the RTC and in
19 other positions, Ms. Aznaran herself had sent over 20 people to
20 the RPF. Id. at 619, 728. Ms. Aznaran was well aware that her
21 support for the Broekers would likely result in her assignment to
22 the RPF. Id. at 1093.

23 The RPF is based solely on the writings of L. Ron Hubbard,
24 and is considered by Scientologists to be a mandatory and essen-
25 tial element of their religious beliefs and practice. Flinn

26 ^{16/} In assigning herself to the RPF, Ms. Aznaran wrote: "I have
27 taken part in off source actions that have been detrimental to
28 Scientology. I now wish to do the RPF so that I can handle and
fully redeem myself." Ex. 109.

1 Declaration, ¶ 24. The purpose of the RPF is to attempt to reha-
2 bilitate or save Sea Organization members who have engaged in
3 actions deemed to be seriously detrimental to the Sea Organiza-
4 tion or Scientology. Mr. Hubbard established the RPF in response
5 to perceived problems with prior Scientology policy, in which Sea
6 Organization members were simply expelled for serious impro-
7 prieties. Id. ¶ 24. Members complained that these persons should
8 be given an opportunity to be rehabilitated, rather than simply
9 expelled from the order. Persons in the RPF perform manual labor
10 and receive spiritual counseling, including auditing and study.
11 While in the RPF, a person is removed from the pressures and
12 responsibilities of her prior position, which may have contribu-
13 ted to the improper conduct, until she is ready to resume her
14 former or another position. Id. ¶ 24.

15 An individual assigned to the RPF may choose one of three
16 courses of action. First, in order to remain in the Sea Organi-
17 zation, she must complete the RPF until ready to return to her
18 former or another position. V.A. Dep. at 1097-98. Second, a
19 person may also choose to "route out" of the Sea Organization,
20 whereby they agree to comply with Scientology procedures for
21 leaving the Sea Organization, but may remain Scientologists in
22 good standing. V.A. Dep. at 721, 1113. Ms. Aznaran chose to
23 follow this course. Id. at 1101, 1113. Third, the person simply
24 may choose to leave, or "blow" the Church. V.A. Dep. at 721,
25 1100. Such a person is subject to being excommunicated from the
26 Church and shunned by other Scientologists. In addition, a
27 Scientologist may seek a Committee of Evidence to review the
28

1 charges against her and may not have to go to the RPF if she
2 prevails. V.A. Dep. at 1179.

3 Ms. Aznarans' testimony is clear that her decision to enter
4 the RPF was not a result of force or physical coercion. Rather,
5 at the time she entered, she "was very confused," and unsure of
6 her future in Scientology, and unsure if she wanted to leave the
7 Sea Organization. V.A. Dep. at 1097-99. Her decision to submit
8 to the Church's internal disciplinary authority until she made up
9 her mind to leave the Sea Organization is simply no business of
10 the civil courts.

11 Her testimony is also clear that she was not "imprisoned"
12 in the RPF. She remained there for four weeks because she was
13 confused and unsure of what she wished to do. At times she
14 traveled from Happy Valley to Gilman Hot Springs and came in
15 contact with other Church members not in the RPF. Id. at 725-26.
16 No one ever physically restrained her and no weapons were ever
17 used on her. Id. at 724.

18 Ms. Aznarans' false imprisonment claim is most obviously
19 rebutted by her own testimony, in which she explicitly refuted
20 the statement in her complaint that she "escaped" from Happy
21 Valley, Complaint, ¶ 30, stating that "I don't necessarily call
22 it 'escaped' from Happy Valley. . . . I left from Happy Valley."
23 V.A. Dep. at 733. If Ms. Aznaran was indeed falsely imprisoned,
24 then she certainly would not have explicitly rejected her own
25 complaint's characterization of the event as an "escape." See
26 also Flinn Declaration, ¶ 29.

27 Her testimony is unambiguous that after four weeks on the
28 RPF, she decided she was no longer willing to submit to the

1 authority of the Church. Two friends then left Happy Valley,
2 rented a car, returned and picked up Ms. Aznaran without any
3 hindrance from anyone whatsoever. V.A. Dep. at 734. Ms. Aznaran
4 then made a decision to "route out" from Scientology, which she
5 did with her husband Richard Aznaran during several days in
6 Hemet, California. Id. at 1113. At the end of this period, on
7 April 9, 1987, the Aznarans received a \$20,000 low interest loan
8 from the Church, \$1500 for their horse, and Ms. Aznaran hugged
9 Mr. Miscavige, who told Ms. Aznaran that she would be welcomed
10 back to the Sea Organization. Id. at 1101-02, 1114-17.

11 Ms. Aznarans' testimony is clear that she went to the RPF
12 as a result of her support for the Broekers, who had attempted to
13 position themselves improperly as the leaders of Scientology.
14 This Court cannot review whether or not Ms. Aznaran acted improv-
15 erly in supporting the Broekers, whether she was improperly
16 removed from her position, or whether she was improperly sent to
17 the RPF. These are all matters of internal church governance and
18 discipline over which this Court has no jurisdiction.

19 Although civil courts can adjudicate certain property dis-
20 putes concerning religious organizations if they can be resolved
21 by applying neutral principles of civil law, it has long been
22 settled that the courts cannot resolve disputes that involve
23 issues of religious doctrine or belief, such as which group is
24 the "true" church, whether ecclesiastical officials have been
25 properly defrocked, or whether discipline has been properly
26 imposed. See Watson v. Jones, 13 Wall. (80 U.S.) 679 (1871);
27 Gonzalez v. Roman Catholic Archbishop, 280 U.S. 1 (1929); Kedroff
28 v. St. Nicholas Cathedral, 344 U.S. 94 (1952); Presbyterian

1 Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,
2 393 U.S. 440 (1969). "Among the separation of church and state
3 principles required by the establishment and free exercise
4 clauses of the first amendment is that courts may not adjudicate
5 ecclesiastical disputes." Crowder v. Southern Baptist Conven-
6 tion, 828 F.2d 718 (11th Cir. 1987), cert. denied, 484 U.S. 1066
7 (1988). As the court stated in Crowder, "by entering into a
8 religious controversy and putting the enforcement power of the
9 state behind a particular religious faction, a civil court risks
10 'establishing' a religion." Id. at 721.

11 The appropriateness of a hierarchical church's nonviolent
12 disciplinary actions taken against a member has consistently been
13 held to be beyond the cognizance of the civil courts. Indeed,
14 the courts have been particularly deferential when questions of
15 church discipline are at issue. See e.g., Serbian Eastern
16 Orthodox Diocese v. Milivojeovich, 426 U.S. 696, 717 (1976)
17 ("questions of church discipline and the composition of the
18 church hierarchy are at the core of ecclesiastical concern").
19 Even if an ecclesiastical decision appears harsh, unfair, or
20 irrational from a secular viewpoint, civil courts have no role to
21 play: "Constitutional concepts of due process, involving secular
22 notions of fundamental fairness or impermissible objectives, are
23 therefore hardly relevant to such matters of ecclesiastical
24 cognizance." Id. at 714-15 (footnote omitted).

25 In Paul, supra, the Ninth Circuit recently reaffirmed these
26 principles of judicial deference even to harsh ecclesiastical
27 disciplinary decisions that inflict severe emotional distress on
28 members or former members:

1 Churches are afforded great latitude when they impose
2 discipline on members or former members. We agree with
3 Justice Jackson's view that "[r]eligious activities which
4 concern only members of the faith are and ought to be free
5 -- as nearly absolutely free as anything can be." Prince v.
6 Massachusetts, 321 U.S. 158, 177. . . (1944) (concurring).
7 819 F.2d at 883.^{17/}

8 The allegations of false imprisonment (or infliction of
9 emotional distress) here are simply an effort to obtain civil
10 adjudication of Ms. Aznarans' decision to adhere to Church dis-
11 cipline at a time when remaining within the Church was of para-
12 mount importance to her. Now that her priorities have changed,
13 she asks this court and a jury to review the propriety of the
14 Church's imposition of discipline and her obedience to it when it
15 suited her purposes. As made clear in Serbian Orthodox Diocese
16 and Paul, however, this is an inquiry that secular courts cannot
17 undertake.

18 Indeed, it is not at all unusual for an ecclesiastical of-
19 ficial to be stripped of his position, disciplined, and required

20 ^{17/} See also Kaufmann v. Sheehan, 707 F.2d 355, 358-59 (8th Cir.
21 1983); Simpson v. Wells Lamont Corp., 494 F.2d 490, 492 (5th Cir.
22 1974); Church of Scientology Flag Services Org., 756 F. Supp. at
23 1517 ("Laws that interfere in hierarchical religious
24 associations' decisions regarding control of church real
25 property, appointments to church positions and discipline are
26 generally invalid."); Higgins v. Maher, 210 Cal.App.3d 1168, --
27 1170, 258 Cal.Rptr. 757, 757-58 (1989) ("The civil courts will
28 therefore not intrude into the church's governance of 'religious'
or 'ecclesiastical' matters, such as theological controversy,
church discipline, ecclesiastical government, or the conformity
of members to standards of morality.") (emphasis added), cert.
denied, 110 S.Ct. 1135 (1990); First Baptist Church of Glen Este
v. State of Ohio, 591 F. Supp. 676, 683 (S.D. Ohio 1983) aff'd,
661 F.2d 925 (4th Cir. 1981), cert. denied, 454 U.S. 1146 (1982);
First Presbyterian Church v. United Presbyterian Church, 430 F.
Supp. 450, 456-57 (N.D.N.Y. 1977).

1 to undergo a period of isolation and reflection for what Church
2 officials, in their sole discretion, determine to be improper
3 behavior. The Flinn Declaration, ¶¶ 24-29, discusses some of the
4 common forms of discipline visited upon members of ecclesiastical
5 orders, besides which Ms. Aznaran's experience in the RPF, even
6 accepting her testimony as true, pales by comparison.^{18/}

7 In Snyder v. Evangelical Orthodox Church, 216 Cal.App.3d
8 297, 264 Cal.Rptr. 640 (1989), a bishop in the church who con-
9 fessed to an adulterous relationship was ordered by his superior
10 to spend a week isolated in a cabin "to struggle for his soul
11 without outside contact," as a condition to receiving absolution.
12 Id. at 304, 264 Cal.Rptr. at 643. The court found nonactionable
13 a claim for false imprisonment based on the plaintiff's decision
14 to acquiesce in this confinement out of fear that his confidence
15 would be revealed and that he would not be absolved. Id., 264
16 Cal.Rptr. at 644.

17 The decision by the Church's ecclesiastical authorities to
18 assign Ms. Aznaran to the RPF, and her motives and desires that
19 led her first to agree to submit to the discipline and then to
20 decide to leave and "route out" of the Sea Organization is beyond
21 this Court's jurisdiction, and cannot be submitted to the subjective
22 predilections of a jury under the rubric of "false imprison-

23
24 ^{18/} Moreover, Ms. Aznaran's description of her restraints on the
25 RPF are similar to numerous other practices in which members of
26 religious orders are "locked in" at night or subject to
27 surveillance or close supervision. Flinn Declaration, ¶ 29. In
28 many Catholic orders, novices and errant monks or nuns are often
placed under surveillance and have their movement greatly
restricted. Id. The crucial element is that if the individual
chose to do so, she could simply leave, which is precisely what
Ms. Aznaran did. V.A. Dep. at 733-34; Flinn Declaration, ¶ 29.

1 ment," which claim is, in any event, so patently belied by Ms.
2 Aznaran's own testimony.

3 C. The Claims For Intentional And
4 Negligent Infliction of Emotional
5 Distress Must Be Dismissed

6 Plaintiffs' intentional infliction of emotional distress
7 claim is wholly derivative of their fraud claim. In its entirety,
8 plaintiffs claim, "The use of fraud to impose coercive persuasion
9 will support a cause of action for intentional infliction
10 of emotional distress as well as fraud (Molko, 64 [sic, 46] Cal.,
11 3d [sic] at 1120)." Status Report, at 5. Because the First
12 Amendment bars liability for the fraud claim, see Point IIA,
13 supra, the emotional distress claim must necessarily be
14 dismissed.^{19/}

15 The emotional distress claim asserts that, as a consequence
16 of the alleged "fraud," the Church engaged in "coercive persuasion"
17 or "brainwashing." Even assuming that the predicate fraud
18 claim may survive this motion, the First Amendment clearly forbids
19 liability for the peaceful religious practices upon which
20 the Aznarans base their "brainwashing" claim.

21 19/ - The Third Cause of Action for negligent infliction of emotional
22 distress is also wholly derivative of the fraud claim, and
23 is identical to the intentional infliction claim. Status Report,
24 at 5. It too must fall with the fraud claim. Moreover, the
25 courts have rejected claims for negligent infliction of emotional
26 distress based on an alleged breach of a duty of care in the
27 conduct of religious practices. See Nally v. Grace Community Church,
28 47 Cal.3d 278, 298-300, 253 Cal.Rptr. 97, 109-10 (1988),
cert. denied, 490 U.S. 1007 (1989); Wollersheim, supra, 212
Cal.App.3d at 901, 260 Cal.Rptr. at 350 ("the religious freedom
consideration outweighs any concern about spreading the cost of
emotional injury. . . religious organizations owe no duty to
members or former members with respect to these forms of
[emotional] injury [from religious practices]").

1 The Aznarans are not particularly clear as to how they
2 purportedly became brainwashed (which they claim had occurred by
3 1971 or 1972, V.A. Dep. at 1170; R.A. Dep. II at 641), but it
4 allegedly occurred through studying and reading about
5 Scientology, attending Scientology lectures, participating in the
6 religious practice of auditing, being told that "it is a waste of
7 time to read anything, pretty much, but what Hubbard writes,"^{20/}
8 and adhering to the Scientology rules of ethical conduct, until
9 "[y]ou finally are to the point where you do not examine, logi-
10 cally, Scientology." V.A. Dep. at 1171-1172; R.A. Dep. II at 95-
11 99. Indeed, according to the Aznarans, virtually every high-
12 level official in the Scientology religion has been brainwashed.
13 V.A. Dep. at 1200-01; R.A. Dep. II at 666.

14 Their testimony is clear that they were never subjected to
15 physical force or threats of force, never required to take audit-
16 ing against their will, and never forced to join any church or
17 mission. V.A. Dep. at 1185-86, 1205-08; R.A. Dep. I at 336. The
18 only "physical trauma" Ms. Aznaran experienced was "[l]ack of
19 sleep, mostly", resulting from a heavy work schedule while she
20 was a church staff member. V.A. Dep. at 1208-09.^{21/} Moreover,

21 ^{20/} Despite these alleged statements, Ms. Aznaran conceded that
22 she could buy books and newspapers from 1972-1987, except for the
23 four weeks on the RPF in 1987; that she had a television from
1972-82, and that she often went to the movies. V.A. Dep. at
1173-74.

24 ^{21/} The only alleged exception to this lack of any threats of
25 physical force allegedly occurred at the RPF in March 1987,
26 fifteen years after the Aznarans claim they were brainwashed.
27 Far from persuading Ms. Aznaran to participate in Scientology
28 practices and beliefs, her experiences at the RPF led directly to
her decision to leave Scientology. V.A. Dep. at 825-828, 1097-
1101. Thus, any claim that the RPF caused Ms. Aznaran to be
brainwashed and therefore to participate in Scientology would be
completely frivolous.

1 the Aznarans do not and cannot assert that they were placed in a
2 "coercive" environment upon joining the Church. Indeed, they did
3 not join Scientology staff at the Dallas mission until late 1973,
4 well over one year after they began to participate in Scientolo-
5 gy. V.A. Dep. at 518-519, 532-53, 1251; R.A. Dep. I at 308-16,
6 320.

7 Plaintiffs now attempt to have a jury impose massive dam-
8 ages based upon admittedly voluntary participation in peaceful
9 religious practices through a jury's subjective application of
10 the concept of "outrageous conduct" -- a necessary element of an
11 emotional distress claim -- to an inflammatory claim of "brain-
12 washing".

13 In Hustler Magazine v. Falwell, 485 U.S. 46 (1988), the
14 Court held that an offensive parody of a public figure could not
15 be actionable for intentional infliction of emotional distress.
16 The Court concluded that there was no "principled standard" to
17 separate the parody from more traditional political cartoons in
18 terms of constitutional protection, id. at 55, and stated that,
19 "we are quite sure that the pejorative description 'outrageous'
20 does not supply one," id.

21 The Court's fear that the "inherent subjectiveness" of the
22 term "outrageousness" "would allow a jury to impose liability on
23 the basis of the jurors' tastes or views, or perhaps on the basis
24 of their dislike of a particular expression," id., is even more
25 apt where religious belief and practice are at issue. Religious
26 beliefs tend to be among the most strongly held and exclusive
27 points of view, and they uniquely engender controversy, hostili-
28 ty, rivalry and prejudice. It is objectively unreasonable to

1 expect that jurors will be able to put aside their own sacred
2 beliefs and biases when confronted with claims that a new reli-
3 gion obtains adherents by "brainwashing" them, especially given
4 the well-known history of public opprobrium for unconventional
5 religions. Certainly, the "pejorative description 'outrageous'
6 does not supply" the principled standard, id., to distinguish
7 constitutional from unconstitutional voluntary peaceful religious
8 practices, any more than in the realm of free speech.

9 Merely recharacterizing peaceful religious representations,
10 doctrines, and practices as "brainwashing" or "coercive persua-
11 sion" cannot convert constitutionally protected religious conduct
12 into a tort. Again, there is no principled way by which a court
13 may draw the distinction, within the confines of the First Amend-
14 ment, between the religious convert who is "legitimately" persua-
15 ded by the beliefs and practices of one religion from the convert
16 who is "illegitimately," "outrageously," or "fraudulently" per-
17 suaded by the beliefs and practices of another.^{22/} The test for
18 impermissible religious conversion cannot possibly be the one

19
20 ^{22/} Indeed, even the terminology of this novel theory -- "coercive
21 persuasion" -- is in fundamental conflict with traditional First
22 Amendment jurisprudence. In NAACP v. Claiborne Hardware, 458
23 U.S. 886 (1982), for example, the Court used virtually identical
24 language to describe the protected actions of the defendants
25 therein. They "sought to persuade" through non-violent
26 "'threat[s]'" that may have "coerce[d]" others into action. Id.
27 at 909-10 (emphasis added); see Organization for a Better Austin
28 v. Keefe, 402 U.S. 415, 419 (1971) ("The claim that the
expressions were intended to exercise a coercive impact on
respondent does not remove them from the reach of the First
Amendment"); cf. United States v. Kozminski, 487 U.S. 931, 949-53
(1988) (holding that involuntary servitude under Thirteenth
Amendment and 18 U.S.C. § 1584 requires use or threatened use of
physical or legal coercion, not psychological coercion; rejecting
the theory of "psychological coercion" such as "a religious
leader who obtains personal services by means of religious indoc-
trination").

1 posited by the Aznarans -- i.e., whether "you finally are to the
2 point where you do not examine logically," your religious
3 beliefs. V.A. Dep. at 1172-72.

4 Courts have generally held that religious organizations
5 cannot be liable in tort for "brainwashing," because to do so
6 would not only impose liability for religious practices that do
7 not justify government regulation, but also because judicial
8 scrutiny of a religion's persuasiveness inherently involves con-
9 stitutionally impermissible scrutiny of the validity or
10 credibility of a religion's dogma.

11 Thus, the court in Katz v. Superior Court, 73 Cal.App.3d
12 952, 141 Cal.Rptr. 234 (1977), understood that claims that a
13 religious organization had "brainwashed" individuals could not be
14 reconciled with the First Amendment: "When the court is asked to
15 determine whether that change [in lifestyle] was induced by faith
16 or by coercive persuasion is it not in turn investigating and
17 questioning the validity of that faith?" Id. at 987-88, 141
18 Cal.Rptr. at 255-56.

19 In Meroni v. Holy Spirit Ass'n, 119 A.D.2d 200, 506
20 N.Y.S.2d 174 (1986), the plaintiff alleged that the Unification
21 Church had "brainwashed" his son through "highly programmed
22 behavioral control techniques in a controlled environment." 506
23 N.Y.S.2d at 176-77. The court, however, rejected the claim that
24 the alleged brainwashing could constitute intentional emotional
25 distress:

26 The conduct of the defendant Unification Church . . . con-
27 stitutes common and accepted religious proselytizing prac-
28 tices, e.g., fasting, chanting, physical exercises, clois-

1 tered living, confessions, lectures, and a highly structured
2 work and study schedule. To the extent that the plaintiff
3 alleges that the decedent was "brainwashed" as a result of
4 the church's program, this claim must be viewed in the con-
5 text of the situation as a whole, i.e., as a method of reli-
6 gious indoctrination that is neither extreme nor outrageous
7 when it is considered that the subjects of the so-called
8 "brainwashing" are voluntarily participating in the program,
9 and the various activities mentioned above, which allegedly
10 induced the "mind control", are not considered by our
11 society to be beyond all possible bounds of decency.

12 Id. at 177.^{23/}

13 In Molko v. Holy Spirit Ass'n, 46 Cal.3d 1092, 252
14 Cal.Rptr. 122 (1988), cert. denied, 490 U.S. 1084 (1989), the
15 California Supreme Court did not hold that tort liability could
16 be imposed for coercive persuasion or brainwashing itself. As
17 the court acknowledged, fasting, poverty, silence or cloistered

18

19 ^{23/} See also George v. ISKCON of California, 213 Cal.App.3d 729,
20 262 Cal.Rptr. 217, 236 (1989) (holding that tort liability for
21 brainwashing based on "dietary restrictions, methods of worship,
22 and communal living arrangements and schedules is just as surely
23 inimical to the free exercise of religious liberty as that based
24 on threats of divine retribution"), pet. for cert. granted,
25 vacated and remanded on other grounds, 111 S.Ct. 1299 (1991);
26 Lewis v. Holy Spirit Ass'n, 589 F. Supp. 10, 13 (D.Mass. 1983);
27 Turner v. Unification Church, 473 F. Supp. 367, 371 (D.R.I. 1978)
28 aff'd, 602 F.2d 458 (1st Cir. 1979); Matter of Guardianship of
 Polin, 675 P.2d 1013, 1016 (Okla. 1983) (a finding that young
 woman is incompetent based on assertions that she was
 "brainwashed" by religious sect into accepting their beliefs
 would result in "denial of [her] right to her religious
 beliefs"), cert. denied, 469 U.S. 850 (1984); Christofferson, 644
 P.2d at 590-91 (1982) (finding Scientology recruitment or indoc-
 trination techniques nonactionable; "[t]he most that can be said
 is that plaintiff was convinced by defendants to accept what they
 were teaching; unless the means involved more than persuasion,
 that is not outrageous").

1 living constitute intensive religious practices that are ordi-
2 narily not actionable. 46 Cal.3d at 1122, 252 Cal.Rptr. at 139.
3 What the court found actionable was the objectively verifiable
4 fraud of misrepresenting, in response to specific inquiries, the
5 identity of the organization with which plaintiffs were asso-
6 ciating, "for the purpose of inducing them to submit unknowingly
7 to coercive persuasion." Id. at 1120, 252 Cal.Rptr. at 138
8 (emphasis added).

9 Thus, assuming that Molko was correctly decided,^{24/} the
10 essential predicate for the claim in Molko is wholly lacking
11 here. Plaintiffs at all times knew they were participating in
12 Scientology practices and that they were being exposed to Scien-
13 tology doctrines; indeed, they explicitly sought out a Scien-
14 tology Mission to obtain Scientology services. V.A. Dep. at
15 520-526, 529-33; R.A. Dep. I at 266-267. Moreover, the Aznarans
16 -- like any competent adults -- clearly knew that the individual
17 Scientologists were trying to persuade the Aznarans to join and
18 participate in Scientology. The Aznarans' claims have nothing in
19 common with the claims in Molko, in which defendants misstated to

20 ^{24/} The "coercive persuasion" or "brainwashing" theory in Molko
21 was decisively rejected on nonconstitutional grounds in United
22 States v. Fishman, 743 F. Supp. 713 (N.D.Cal. 1990). There, the
23 court refused to permit the same individuals who testified in
24 Molko -- Dr. Margaret Singer (also the Aznarans' proposed
25 "expert") and Dr. Richard Ofshe -- to testify about their theory
26 because "the Singer-Ofshe thesis involving coercive persuasion --
27 and religious cults is not generally accepted within the
28 scientific community and consequently is inadmissible under Frye"
v. United States, 293 F. 1013 (D.C.Cir. 1923). Id. at 721; see
also Greene v. Yogi, No. 87-0015, at 12-14 (D.D.C. March 12,
1991) (excluding "thought reform" testimony of Drs. Singer and
Ofshe, because even under a relaxed standard of admissibility for
civil cases, their theories have "failed to gain substantial
acceptance within the scientific community"). Defendants intend
to address the admissibility of evidence of "brainwashing" in a
subsequent motion.

1 plaintiffs the identity of the organization they were being asked
2 to join and to participate in, and plaintiffs were therefore
3 unaware that individuals were trying to persuade them to
4 participate in and accept the practices and beliefs of the
5 Unification Church.

6 Outside the "brainwashing" context, the courts have also
7 repeatedly rejected emotional distress claims based on religious
8 practices, religiously motivated conduct, or ecclesiastical gov-
9 ernance. For example, in Paul, supra, the Ninth Circuit rejected
10 emotional distress claims resulting from the shunning or ex-com-
11 munication of a former parishioner, because the religious organi-
12 zation and its officials "possess an affirmative defense of
13 privilege -- a defense that permits them to engage in the prac-
14 tice of shunning pursuant to their religious beliefs without
15 incurring tort liability," 819 F.2d at 879, even if the practice
16 in fact caused emotional distress. Thus, the court concluded:

17 The harms suffered by Paul as a result of her shunning by
18 the Jehovah's Witnesses are clearly not of the type that
19 would justify the imposition of tort liability for reli-
20 gious conduct. No physical assault or battery occurred.
21 Intangible or emotional harms cannot ordinarily serve as a
22 basis for maintaining a tort cause of action against a
23 church for its practices -- or against its members. . . .
24 Offense to someone's sensibilities resulting from religious
25 conduct is simply not actionable in tort. Without soci-
26 ety's tolerance of offenses to sensibility, the protection
27 of religious differences mandated by the first amendment
28 would be meaningless.

1 Id. at 883 (citations and footnote omitted, emphasis added).

2 In Higgins, supra, a Roman Catholic priest brought numerous
3 tort claims against his Bishop and the Church for his removal
4 from his position, subsequent psychiatric treatment, which in-
5 cluded drugs and shock therapy,^{25/} and public revelation of
6 alleged private defamatory information. The court found that the
7 complaint adequately alleged "torts of invasion of privacy, defa-
8 mation, and the intentional and negligent infliction of emotional
9 distress." 210 Cal.App.3d at 1175, 258 Cal.Rptr. at 761. The
10 court, however, dismissed the complaint because, even if defen-
11 dants had engaged in the alleged tortious conduct, "the acts so
12 taken were part and parcel of the Bishop's administration of his
13 ecclesiastical functions." Id. at 1175-76, 258 Cal.Rptr. at 761.

14 As the court stated:

15 the torts recited are simply too close to the peculiarly
16 religious aspects of the transaction to be segregated and
17 treated separately -- as simple civil wrongs. The making of
18 accusations of misconduct; the discussion of same within the
19 order; the recommendation of psychological or medical treat-
20 ment; the infliction, whether intentionally or negligently,
21 of emotional distress -- these are all activities and
22 results which will often, if not usually, attend the diffi-
23 cult process by which priestly faculties are terminated.

24
25 ^{25/} Higgins averred that "upon persuasion from the Church," he
26 "underwent a program of rehabilitation with a therapy-oriented
27 organization within the church," during which he was "given
28 various drugs which caused him to become nervous and lose much of
his reasoning ability" and that he was "treated with electroshock
therapy." 210 Cal.App.3d at 1172, 258 Cal.Rptr. at 758.

1 Id. at 1176, 258 Cal.Rptr. at 761 (emphasis added). Here, it is
2 equally impossible to separate out the alleged torts from the
3 Aznarans' religious devotion to Scientology over a fifteen year
4 period, and "the difficult process by which" the Aznarans relin-
5 quished their important positions within the Church. The Consti-
6 tution does not permit tort liability against the Scientology
7 religion in this case any more than against the Roman Catholic
8 Church or its officials for the far more egregious conduct
9 alleged in Higgins. See also Orlando v. Alamo, 646 F.2d 1288,
10 1290 (8th Cir. 1981) (Church's alleged indoctrination program,
11 religious teachings, and tactics are not actionable as infliction
12 of emotional distress); Guinn v. Church of Christ of
13 Collinsville, Oklahoma, 775 P.2d. 766 (Ok. 1989) (dismissing
14 intentional infliction of emotional distress claim based on dis-
15 fellowship from Church and public revelation of sexual relations
16 out of wedlock).

17 The Aznarans' assertion that the mere purported fear of
18 being declared "suppressive persons" constitutes actionable
19 infliction of emotional distress is without merit. To be
20 declared a suppressive person is simply to be excommunicated from
21 the Scientology religion.^{26/} Obviously, Scientology is not alone
22 in excommunicating or shunning members found to have violated
23 Church doctrine. See Paul, 819 F.2d at 879; Flinn Declaration, ¶

24 ^{26/} Although the Aznarans claim that they feared becoming "fair
25 game," which they claim is a consequence of being declared a
26 "suppressive person," their repeated testimony is unequivocal
27 that the Aznarans joined Scientology voluntarily, participated in
28 its religious practices voluntarily throughout their membership,
and voluntarily chose to become leaders in the Scientology
religion, see n.25, supra, and not as a consequence of any
belated allegations of fear of "fair game."

1 30. It is inconceivable that a Catholic Bishop could succeed in
2 an emotional distress claim against his Church, claiming that he
3 remained a Bishop or engaged in Catholic religious practices only
4 out of fear of being excommunicated. Such a claim should be no
5 more conceivable against a newer, minority religion.

6 Similarly, Ms. Aznaran's complaint that she engaged in
7 humbling physical labor on the RPF is also a common practice
8 among religious orders. Members of Christian religious orders
9 are required to take vows of obedience and humility, which fre-
10 quently entail performing lowly tasks that might appear degrading
11 and demeaning to outsiders. Flinn Declaration, ¶¶ 27, 31. Zen
12 Buddhists may be required to perform repetitive and apparently
13 meaningless tasks as a means toward enlightenment. Id.

14 Likewise, her claim of "lack of sleep," V.A. Dep. at 1208-
15 09, hardly constitutes an unusual practice among religious
16 orders. Franciscan friars, Cistercians and Trappist all engage
17 in practices that the Aznarans would undoubtedly characterize as
18 "sleep deprivation". Id. ¶ 28. As the Flinn Declaration notes,
19 te rehabilitative or disciplinary practices experienced by Ms.
20 Aznaran for four weeks on the RPF would be considered lenient by
21 an errant Christian mark. Id.

22 Because the First Amendment cannot tolerate lawsuits based
23 on emotional distress from participation in religious practices
24 or from religious discipline for misconduct by high-ranking
25 ecclesiastical officials within a church, the emotional distress
26 claims must be dismissed in their entirety.

1 D. The Loss Of Consortium Claim Is
2 Barred By The First Amendment

3 The Aznarans' loss of consortium claim is simply not cog-
4 nizable by this Court. The claim is primarily based on Ms.
5 Aznaran's decision to accept and retain her post as President of
6 RTC, at the very pinnacle of the Scientology ecclesiastical hier-
7 archy. As Ms. Aznaran testified, during the plaintiffs' four-
8 teen-month period of intermittent separation in 1986-87 (during
9 which time the Aznarans saw each other on at least 12-22 occa-
10 sions, and frequently corresponded and telephoned each other,
11 R.A. Dep. I at 390-94; V.A. Dep. at 223, 1219-20), she was
12 Inspector General and President of RTC, and it was her choice to
13 take those posts. V.A. Dep. at 1216-17.^{27/}

14 Decisions of a religious organization to order church offi-
15 cials to work at certain locations or to perform certain tasks
16 have long been held nonjusticiable in the civil courts. See
17 Serbian Orthodox Diocese, 426 U.S. at 721. Certainly, if a
18 church can remove ecclesiastical officials without judicial
19 scrutiny, see id. at 717-18; Higgins, 210 Cal.App.3d at 1176, 258
20 Cal.Rptr. at 761, then where and how church officials are
21 assigned to serve the religion is a core ecclesiastical matter,
22 not subject to civil court review. See Gonzalez v. Roman
23 Catholic Archbishop, 280 U.S. 1, 16 (1929); Kaufman, 707 F.2d at
24 358 ("status and employment as a priest . . . go to the heart of
25 internal church discipline, faith, and church organization, all

26
27 ^{27/} Similarly, the plaintiffs' brief three-month separation in
28 1981 resulted from Ms. Aznaran's voluntary acceptance of a post
in Los Angeles, while Mr. Aznaran continued to work in
Clearwater, Florida. V.A. Dep. at 980, 1216-17.

1 involved with ecclesiastical rule, custom and law"); McClure v.
2 Salvation Army, 460 F.2d 553, 557 (5th Cir.) ("determination of a
3 minister's . . . place of assignment, and the duty he is to per-
4 form in the furtherance of the religious mission of the church"
5 are "matter[s] of church administration and government" beyond
6 civil court jurisdiction), cert. denied, 409 U.S. 896 (1972). As
7 the court stated in McClure, adjudicating employment policies of
8 a religious organization "would involve an investigation and
9 review of these practices and decisions and would . . . cause the
10 State to intrude upon matters of church administration and gov-
11 ernment . . . of a singular ecclesiastical concern." Id. at 560.

12 Many religious organizations encourage or even require that
13 adherents, particularly those who join religious orders or
14 achieve high ecclesiastical authority, abandon secular ties and
15 depend on their Church for all social and emotional contact,
16 maintaining themselves as insular communities open only to co-
17 religionists. See Flinn Declaration, ¶ 33. Such requirements
18 often go far beyond any restrictions experienced by the Aznarans,
19 who visited each other frequently during the brief periods they
20 worked at separate locations, and who visited and spoke and cor-
21 responded with their families and frequently traveled around the
22 United States and to Europe. V.A. Dep. at 575, 601-02, 624-25,
23 783-84, 1211-13; R.A. Dep. I at 7-13, R.A. Dep. II at 869.

24 Courts have frequently held, as a matter of law, that reli-
25 gious practices of encouraging isolation from the secular world,
26 or other similar religious beliefs and practices, are not tor-
27 tious. See, e.g., Paul, 819 F.2d at 883; Orlando v. Alamo, 646
28 F.2d 1288, 1290 (8th Cir. 1981); Van Schaick v. Church of

1 Scientology, 535 F. Supp. 1125, 1139 (D.Mass. 1982); Meroni v.
2 Holy Spirit Ass'n., 506 N.Y.S.2d at 177. If a church may require
3 church officials to work at specific locations and tasks, or to
4 cut ties with the secular world, free of civil court scrutiny,
5 certainly it can request spouses who belong to a religious order
6 to work temporarily in different, but nearby, locations in the
7 service of the religion as a condition of continued ecclesiasti-
8 cal leadership.

9 The Aznarans, it must be emphasized, were not mere parish-
10 ioners. They were, as members of the Sea Organization, among the
11 highest ecclesiastical leadership of Scientology, who had vowed
12 to dedicate their life to help advance the goals of Scientology.
13 V.A. Dep. at 605-09; Ex. 17; Kliever Declaration, ¶ 35; Flinn
14 Declaration, ¶¶ 16, 24. Indeed, Ms. Aznaran was President of
15 RTC, charged with the sacred task of maintaining the purity of
16 the Scientology technology as discovered and developed by Mr.
17 Hubbard. For a jury to hold that the Church engaged in tortious
18 conduct by not providing the Aznarans with work assignments in
19 the same location, particularly when there is not a shred of
20 evidence that the Aznarans were not free to leave their positions
21 or the Church (and, indeed, the only evidence is directly to the
22 contrary), would severely and directly burden defendants' con-
23 stitutional rights for no discernible public purpose.

24 Plaintiffs also appear to allege that defendants are
25 somehow responsible for Ms. Azanrans' decision to divorce
26 Richard Aznaran in 1974 and to marry Dean Stokes soon thereafter.
27 Yet it is undisputed that none of the defendants knew of or
28 ratified Stoke's action, and that Stokes was not employed by any

1 of the defendants, none of which even existed at the time. A
2 church cannot vicariously be liable for the acts of its agents
3 (even assuming Stokes was an agent of any of defendants and there
4 is not evidence that he was) that are committed without the
5 knowledge or authority of the Church. See Destefano v. Grabrian,
6 763 P.2d 275, 286-87 (Colo. 1988).

7 Even if defendants could somehow be responsible for Stokes'
8 actions, there can be no liability against these defendants for
9 what is in fact nothing more than an allegation of alienation of
10 affection against Stokes. California has long since abolished
11 claims of alienation of affection. See Jacks v. Jacks, 140
12 Cal.App.2d 852, 295 P.2d 921 (1956); Oct. 22 Memo at 56.

13 To the extent that the Aznarans claim that Stokes was
14 motivated by his interpretation of Scientology beliefs, rather
15 than his amorous interests, there can be no liability. Courts
16 have repeatedly held that an alienation of affection claim cannot
17 be sustained against church officials for expressing religious
18 views or doctrines that lead to separation of spouses or
19 families. See Paul v. Watchtower, Bible & Tract Society, at 883
20 & n.7; Radecki v. Schuckardt, 50 Ohio App.2d 92, 361 N.E.2d 543,
21 544-45 (1976); Bradesku v. Antion, 21 Ohio App.2d 67, 255 N.E.2d
22 265, 269 (1969). Moreover, numerous religious orders have
23 historically required renunciation of all worldly ties, including
24 spouses as a prerequisite to membership and salvation. Flinn
25 Declaration, ¶ 33. Thus, the First Amendment precludes a claim
26 for loss of consortium against a religious organization for a
27 religiously motivated decision to divorce one's spouse.

1 E. Plaintiffs' Breach Of Contract Claim
2 Is Barred By The First Amendment

3 The plaintiffs' breach of contract claim must be dismissed
4 for the same reasons as the fraud claim. See Point IIA, supra.
5 Plaintiffs assert that the defendants failed to provide promised
6 "beneficial psychological and spiritual services," Status Report,
7 at 6 (emphasis added), but instead subjected the plaintiff to
8 deception and "coercive persuasion," id.; see Complaint, ¶¶ 61-
9 62. The alleged contracts are set forth in detail in the Oct. 22
10 Memo, at 29-35. The Aznarans explicitly testified that they did
11 indeed receive Scientology services and training as promised,
12 V.A. Dep. at 701-18, 853-54, 1163-72, 1280; Ex. 27-35, 117, 121-
13 26; R.A. Dep. I at 319, 372; R.A. Dep. II at 850-52; Ex. 146,
14 147, 149; see Oct. 22 Memo at 35-36, but the Aznarans now claim
15 that the services were not sufficiently beneficial.

16 The contracts themselves are explicit that the Aznarans
17 entered into them out of religious commitment and to advance the
18 Scientology religion. For example, on December 11, 1981, Ms.
19 Aznaran signed a "Declaration of Religious Commitment and appli-
20 cation for active participation on Church staff" with defendant
21 CSI, which stated:

22 In making this application and signing this covenant set
23 forth below, I am declaring a religious commitment to the
24 Church, in accordance with the terms of said Covenant, and
25 am forsaking all commercial and financial motivation.
26 (filed herewith as Exhibit J (emphasis added)); see also V.A.
27 Dep. at 1252, Ex. 26; R.A. Dep. I at 363, Ex. 148.

1 The civil courts may be able to adjudicate contract dis-
2 putes between a Church and its officials that concern purely
3 secular issues, such as specific agreements on wages, hours, or
4 financial benefits, but the Aznarans' breach of contract cause of
5 action makes no claim based on failure to provide promised
6 economic benefits. The First Amendment absolutely forbids civil
7 courts from inquiring into whether the spiritual services that
8 plaintiffs concede they received were sufficiently beneficial.

9 For precisely the same reasons as set forth in Point IIA,
10 IIC, supra, the Constitution prohibits a civil court from deter-
11 mining whether a former adherent received "beneficial" spiritual
12 services from his religion, or whether those services constituted
13 "coercive persuasion." Such an inquiry would immediately plunge
14 this Court and a jury into a forbidden inquiry into the validity,
15 credibility, and truth or falsity of defendants' religious
16 beliefs and practices. See, e.g., Ballard, supra; Stansfield v.
17 Starkey, No. CA 002 012 (Sup.Ct. L.A. Cty.) (Minute Order entered
18 Sept. 24, 1987) (dismissing as nonjusticiable a complaint that
19 would have required the court to determine "whether it was an
20 advantage or a detriment to a plaintiff to be a member of . . .
21 [Scientology] over a considerable period of time") (filed here-
22 with as Exhibit K), aff'd, 220 Cal.App.3d 59, 269 Cal.Rptr. 337
23 (1990).

24 Whether denoted as a claim for fraud based on spiritual
25 misrepresentations or for breach of contract for failure to
26 deliver sufficiently beneficial spiritual services, the civil
27 courts and juries simply cannot decide whether the plaintiffs

1 obtained from Scientology the spiritual benefits they desired,
2 and the breach of contract claim therefore must be dismissed.

3 **F. The First Amendment Bars Plaintiffs'**

4 **Claim For Restitution**

5 Plaintiffs claim they are entitled to restitution of money
6 and labor they allegedly provided to defendants "as a result of
7 deceit and coercive persuasion". Status Report, at 7; Dec. 7
8 Memo at 66. Again, because the First Amendment bars plaintiffs'
9 claims based on fraud (deceit) and coercive persuasion, this
10 concededly derivative claim must also fall. In any event, a
11 former member of a religious organization who made a gift or
12 contribution on the basis of religious beliefs that he now no
13 longer holds cannot challenge the validity of the decision to
14 make the contribution without challenging the validity of his
15 decision to adopt his former religious beliefs. In Founding
16 Church, for example, the court stated:

17 [U]nder Ballard it seems unlikely that a disgruntled former
18 adherent could sue a church for fraud and deceit because it
19 had collected money from him on the basis of allegedly
20 "false" doctrines concerning salvation, heaven and hell --
21 or for that matter on the basis of doctrines, such as
22 those of the Christian Scientists, concerning the cause and
23 cure of disease.

24 409 F.2d at 1156 n.32; see Anderson v. Worldwide Church, 661 F.
25 Supp. at 1401 (First Amendment precludes claim for refunds by
26 persons who made contributions based on allegedly fraudulent
27 representations by religious organization that world was coming
28 to an end); Estate of Supple, 247 Cal.App.2d 410, 414-15, 55

1 Cal.Rptr. 542, 545 (1966), cert. denied, 389 U.S. 820 (1967).

2 See, L. Tribe, American Constitutional Law 1235 (2d ed. 1988).

3 The Aznarans, by seeking restitution for contributions made
4 to the Church in the early 1970's, V.A. Dep. 532-33, 600-01, 610,
5 682-86, 1254-57; R.A. Dep. I at 319, 371, when they were
6 believers in Scientology, now ask this Court to determine that
7 their prior religious beliefs were unreasonable, irrational, and
8 false, and that they were improperly persuaded to adopt these
9 false religious beliefs by misrepresentations of the spiritual
10 benefits they would receive. The First Amendment, however
11 precludes this Court from any such undertaking.

12 The California Supreme Court's decision in Molko is not to
13 the contrary. The court there held that plaintiff's restitution
14 claim "arises directly out of his fraud theory." 46 Cal.3d at
15 1124, 252 Cal.Rptr. at 140. The Aznarans' restitution claim also
16 arises directly out of their fraud claim, but, as discussed in
17 Points IIA and IIC, infra, unlike Molko, the Aznarans' fraud
18 claim must fail because it is based on purported spiritual mis-
19 representations that Scientology would "help" plaintiffs and make
20 them "better". The Aznarans' decision to make contributions for
21 Scientology services was done with express knowledge that they
22 would receive Scientology services, which they in fact did
23 receive. See, e.g., V.A. Dep. at 1252, Ex. 20, 21, 26; R.A. Dep.
24 I at 363, Ex. 136, 148.

25 The Aznarans waived their claim for restitution of the
26 alleged value of their labor by failing to raise it in the Status
27 Report, at 7. Even assuming that this claim was not waived,
28 however, it is also barred by the First Amendment, as the

1 Aznarans explicitly claim that they provided their labor in
2 exchange for spiritual, not financial, benefits, and that they
3 are now disappointed in the spiritual services received.

4 The existence of religious orders whose members take vows
5 of poverty, abandon all earthly possessions, and devote all their
6 time to religious pursuits is common among numerous religions,
7 including Christianity, Buddhism and Hinduism. See Flinn
8 Declaration, ¶ 31. Members of religious orders cannot sue for
9 breach of contract or restitution if they subsequently become
10 dissatisfied with the religious succor they received in exchange
11 for their service. In Lewis v. Holy Spirit Ass'n., 589 F. Supp.
12 10 (D.Mass. 1983), for example, the court noted that "no recovery
13 can be had, on a quantum meruit basis, for services rendered by
14 reason of religious or charitable motives." Id. at 13; see also
15 Van Schaick, 535 F. Supp. at 1140 ("[Plaintiff's] services were
16 provided primarily in exchange for auditing [Scientology reli-
17 gious services], rather than financial compensation"). As the
18 Aznarans explicitly agreed to work for Scientology out of reli-
19 gious commitment, see Point IIE, supra, they cannot now seek
20 restitution for the value of their labor because they are dissa-
21 tisfied with the spiritual benefits that they received while
22 devoted to the Scientology religion.

23 G. The Invasion of Privacy

24 Claim Must Be Dismissed

25 As Ms. Aznaran testified, the invasion of privacy claim
26 involves a single incident in which she revealed information
27 about Pat Broeker during an auditing session. Her auditor then
28 allegedly revealed the information about Mr. Broeker to her case

1 supervisor, who discussed it with the senior case supervisor.

2 V.A. Dep. at 1257-61; Oct. 22 Memo at 60-62.

3 Assuming arguendo that Ms. Aznarans' account could other-
4 wise possibly state a claim for invasion of privacy, the First
5 Amendment precludes liability here. Ms. Aznaran explicitly con-
6 ceded that she knew that it is standard Scientology practice and
7 doctrine for case supervisors to read auditing files, that it is
8 entirely proper and expected that supervisors will discuss an
9 auditing file with a senior case supervisor, and that Ms. Aznaran
10 herself frequently read auditing files of others in her capacity
11 as case supervisor. V.A. Dep. at 553-54, 558-59, 1258-61.

12 As these actions were concededly taken pursuant to estab-
13 lished church practice and doctrine, of which Mr. Aznaran was
14 well aware and in which she herself had participated, the pro-
15 priety of the discussions among the three church officials is
16 wholly immune from judicial scrutiny as a matter of internal
17 church doctrine, practice and governance. See, e.g., Higgins,
18 210 Cal.App.3d at 1176, 258 Cal.Rptr. at 761-62 (discussions of
19 priest's confidential psychiatric treatment among ecclesiastical
20 superiors cannot form invasion of privacy claim without "meddling
21 in the ecclesiastical authority of the church"). In any event,
22 there is no conceivable compelling government interest in inter-
23 fering with internal Scientology doctrine and practice, of which
24 the adherent is well aware and in which she has herself engaged,
25 regarding which Church officials are authorized to review infor-
26 mation about a third person received during an auditing session.

1 H. The First Amendment Bars The
2 Aznarans' Minimum Wage Claim

3 Even assuming that the Aznarans otherwise have stated a
4 minimum wage claim under Cal. Labor Code § 1194, the First Amend-
5 ment bars their claim. Both plaintiffs were members of the Sea
6 Organization from 1978 until April 1987. V.A. Dep. at 341-42,
7 608-09, 1113; R.A. Dep. I at 336. As discussed, supra, Ms.
8 Aznaran, who was a Scientology minister, served as President and
9 Inspector General of RTC, which is one of the most important
10 ecclesiastical positions within Scientology. V.A. Dep. at 214-
11 20, 558-64, Ex. 7-9. Richard Aznaran held important administra-
12 tive positions in Scientology, including head of security for
13 various Church facilities and at Mr. Hubbard's ranch following
14 his death. R.A. Dep. I at 325, 380-89. He too was a Scientology
15 minister and provided religious auditing services to others.
16 R.A. Dep. I at 337-339, 359-360; R.A. Dep. II at 850-52.

17 As set forth in Point IIE, supra, the Aznarans explicitly
18 agreed to work for certain of the defendants out of a religious
19 commitment to Scientology, rather than venal motives. V.A. Dep.
20 at 1252-53, Ex. 26; R.A. Dep. I at 363, Ex. 148; Oct. 22 Memo at
21 29-35. Historically, individuals have worked for religious or
22 charitable motives without any expectation of full financial
23 renumeration. Flinn Declaration, ¶ 31. Thus, as noted in Point
24 IIF, supra, courts have recognized that "no recovery can be had
25 on a quantum meruit basis for services rendered by reason of
26 religious or charitable motives." Lewis, supra, 589 F. Supp. at
27 13; see also Turner v. Unification Church, 473 F. Supp. 367, 377
28 (D.R.I. 1978) ("performing services for charitable purposes" does

1 not give rise to claim under FLSA), aff'd, 602 F.2d 458 (1st Cir.
2 1979). Similarly, this federal court should not presume that,
3 absent explicit statutory or regulatory provision, of which there
4 is none, Cal. Labor Code § 1194 reaches so far as to encompass
5 high-ranking ecclesiastical officials who -- like the Aznarans --
6 voluntarily dedicate themselves to the advancement of a religious
7 cause in which they believe at the time. In the absence of any
8 indication that the state intended to reach voluntary religiously
9 motivated conduct by ecclesiastical officials, this federal court
10 should not be the first to so construe it.

11 If this Court determines that section 1194 does apply to
12 the Aznarans' ecclesiastical position within the Church, then
13 such application would violate the First Amendment. As discus-
14 sed, matters of church government and administration are beyond
15 the purview of civil authorities. Imposing minimum wage and
16 overtime requirements on the relationship between the ecclesias-
17 tical leadership and their religious organizations results in
18 substantial interference by civil authorities in matters of faith
19 and religious practice. Thus, "the hazards are ever present of
20 inhibiting the free development of religious doctrine and of
21 implicating secular interests in matters of purely ecclesiastical
22 concern." Mary Elizabeth Blue Hull, supra, 393 U.S. at 449.

23 Such state interference into religious governance and doc-
24 trine is prohibited under the establishment clause. See, e.g.,
25 Serbian Orthodox Diocese, 426 U.S. at 708-09; Simpson, 494 F.2d
26 at 493-94; Van Schaick, 535 F. Supp. at 1140 n.15; cf. Corpora-
27 tion of Presiding Bishop v. Amos, 483 U.S. 327 (1987) (upholding
28 religious exemption from Title VII even for secular non-profit

1 activities of religious organizations); Tony & Susan Alamo Foun-
2 dation v. Secretary of Labor, 471 U.S. 290, 302-05 (1985)
3 (applying Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq.,
4 only to those employees of religious organization engaged in
5 ordinary commercial activities in competition with other commer-
6 cial businesses); 29 C.F.R § 779.214 (FLSA does not apply to
7 "nonprofit educational, religious, and eleemosynary activities"
8 of an organization) (emphasis added).

9 At the core of ecclesiastical governance is a church's
10 decision how to utilize its high-ranking ecclesiastical offi-
11 cials, including the manner in which these officials will be
12 compensated during their years of training and service. In
13 McClure v. Salvation Army, supra, the court rejected a terminated
14 minister's Title VII claim that her wages and benefits were
15 inferior to those of similarly situated male ministers. The
16 court held that the First Amendment prohibited government intru-
17 sion into this relationship:

18 The relationship between an organized church and its
19 ministers is its lifeblood. The minister is the chief
20 instrument by which the church seeks to fulfill its purpose.
21 Matters touching this relationship must necessarily be
22 recognized as of prime ecclesiastical concern. . . .
23 includ[ing] the determination of a minister's salary.

24 460 F.2d at 558-559.^{28/}

25 ^{28/} The courts have routinely held that the First Amendment
26 prohibits application of employment discrimination laws to
27 relations between religious organizations and their
28 ecclesiastical officials. See Minker v. Baltimore Annual
Conference of United Methodist Church, 894 F.2d 1354, 1356-58
(1990); Hutchison v. Thomas, 789 F.2d 392 (6th Cir.), cert.

(footnote continued)

1 In the Church of Scientology, as in most religions,
2 ministers such as the Aznarans agree to serve as part of their
3 religious commitment and to find spiritual fulfillment. They
4 explicitly agree and do not expect to receive substantial
5 financial compensation. See Exhibit J; V.A. dep. at 697-98,
6 Ex. 26; R.A. Dep. I at 363, Ex. 148.

7 Accordingly, for all the foregoing reasons, Cal. Labor
8 Code § 1194 cannot be applied to the Aznarans' relationship
9 with defendants without violating the Religion Clauses of the
10 First Amendment.

11 CONCLUSION

12 For the reasons stated herein, defendants motion for
13 summary judgment that plaintiffs' First through Eleventh Causes
14 of Action are barred by the First Amendment should be granted.

15 Dated: July 11, 1991

Respectfully submitted,

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25 (footnote continued from previous page)
26 denied, 479 U.S. 885 (1986); Rayburn v. General
27 Conference of Seventh-Day Adventists, 772 F.2d 1164 (4th Cir.
28 1985), cert. denied, 478 U.S. 1020 (1986); Kaufman v.
Sheehan, 707 F.2d 355 (8th Cir. 1983); EEOC v.
Southwestern Baptist Theological Seminary, 651 F.2d 277 (5th
Cir. 1981), cert. denied, 456 U.S. 905 (1982).

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On July 17, 1991, I caused to be served the foregoing document described as NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT PURSUANT TO THE FIRST AMENDMENT; MEMORANDUM OF POINTS AND AUTHORITIES on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Hollywood, California, addressed as follows:

Joseph A. Yanny
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HAND SERVICE

If hand service is indicated on the above list, I caused the above-referenced paper to be served by hand.

Executed on July 17, 1991 at Hollywood, California.

